

Significant Legislative Rule Analysis (SA)

Chapter 246-803 WAC

Rules Concerning East Asian Medicine Practitioners

Section 1. What is the scope of the rule?

The proposed rule aligns existing acupuncture rules with changes made in new legislation. Substitute Senate Bill (SSB) 6280 (Chapter 286, Laws of 2010) amended chapter 18.06 RCW to replace “acupuncture” with “East Asian medicine.” It also clarified the scope of practice and made other conforming changes.

Chapter 246-802 WAC Acupuncture will be repealed and replaced with chapter 246-803 WAC, East Asian medicine practitioner (EAMP). The Department of Health (department) determined it would be more beneficial to repeal chapter 246-802 WAC and create a new chapter.

The new chapter includes the requirements established by the bill, including approved exams and didactic and clinical courses in East Asian medicine, patient waiver requirements, and requirements for applicants from foreign schools. The rules also include general housekeeping changes and clarifications, including changing the reference of certification to license, clarifying the inactive status requirements and updating definitions.

Section 2. What are the general goals and specific objectives of the proposed rule’s authorizing statute?

Chapter 18.06 RCW establishes the requirements to practice as an EAMP. The legislative intent of chapter 18.06 RCW is to recognize that acupuncturists engage in a system of medicine, which includes more than just acupuncture, to maintain and promote wellness and to prevent, diagnose, and treat disease by drawing upon experience, learning, and traditions originating in East Asia. The statutory goal is to change the state’s professional designation of acupuncturists to EAMPs and to incorporate current statutory provisions governing acupuncture, while recognizing treatments, methods, and techniques used in East Asian medicine.

The statute’s objectives the rule implements are:

1. Change acupuncture practice/licensure to East Asian medicine practice/licensure.
2. Clarify the scope of practice to recognize treatments, methods and techniques used in East Asian medicine.
3. Add Osteopathic Physician Assistants, Naturopaths, Physician Assistants and Advanced Registered Nurse Practitioners to the list of individuals that are allowed to provide consultation or written diagnosis to EAMPs for patients with potentially serious disorders.
4. Provide for EAMP or equivalent title to individuals applying for a credential from jurisdictions with requirements equivalent to or greater than those in Washington state.

5. Provide for a written waiver that allows East Asian medical treatments to a patient with a potentially serious disorder. Treatment may continue only if the patient signs the waiver acknowledging the risks associated with the failure to pursue treatment from a primary health care provider.
6. Provide for East Asian medicine education programs.
7. Provide for a licensure examination.
8. Provide definitions for commonly used terms.
9. Update the requirements for the scope of practice and qualifications form requirements.

Section 3. What is the justification for the proposed rule package?

The proposed rules will achieve the authorizing statute's goals and objectives as these rules will update the existing acupuncture rules to include: education, training, examination and inactive status requirements for EAMPs, establish the requirements for the patient written waiver, and update the requirements for the scope of practice and qualifications form.

The department has assessed and determined that there are no feasible alternatives to rulemaking as rules are required by statute. These standards need to be established in rule to be enforced.

Section 4. What are the costs and benefits of each rule included in the rules package? What is the total probable cost and total probable benefit of the rule package?

1. Identification of total number of rules in rules package

WAC 246-803-010 Definitions

WAC 246-803-020 Advertising

WAC 246-803-030 East Asian medicine

WAC 246-803-100 Application requirements for applicants from approved colleges, schools or programs

WAC 246-803-110 Application requirements for applicants from accredited schools, colleges or programs

WAC 246-803-120 Application requirements for applicants from approved apprenticeships or tutorials

WAC 246-803-130 Applicants from foreign schools

WAC 246-803-200 Training for East Asian medicine practitioners

WAC 246-803-210 Basic sciences

WAC 246-803-220 East Asian medicine sciences

WAC 246-803-230 Clinical training

WAC 246-803-240 Examinations

WAC 246-803-250 Documents in foreign language

WAC 246-803-300 Patient notification of qualifications and scope of practice

WAC 246-803-310 Referral to primary health care provider

WAC 246-803-330 Plan for consultation, emergency transfer and referral

WAC 246-803-340 Mandatory reporting

WAC 246-803-400 Inactive status

WAC 246-803-500 Application for approval of a non-accredited school, college or program

WAC 246-803-510 Application for approval of alternative training

WAC 246-803-990 East Asian medicine practitioner fees and renewal cycle

2. Table: Non-Significant Rule Identification

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#	WAC Section	Section Title	Section Subject	Reason
1	WAC-246-803-010	Definitions	Provides Definitions	Does not require action or enforcement. Corresponds to WAC 246-802-010.
2	WAC-246-803-020	Advertising	Advertising requirements for an EAMP	Changes the title and allows an EAMP to refer to themselves as an acupuncturist. The requirements are the same as existing requirements and correspond to WAC 246-802-140.
3	WAC-246-803-030	East Asian medicine	Provides definitions for East Asian medicine.	Does not require action or enforcement.
4	WAC-246-803-100	Application requirements for applicants from approved colleges, schools or programs	Lists out the application requirements.	Clarifies language without changing its effect. Parts of this subsection have been moved to different parts of the rules to make them easier to read. Does not require action or enforcement. The requirements are the same as existing requirements and correspond to WAC 246-802-130.
5	WAC-246-803-110	Application requirements for applicants from accredited schools, colleges or programs	Lists out the application requirements.	Clarifies language without changing its effect. Parts of this subsection have been moved to different parts of the rules to make them easier to read. Does not require action or enforcement. The requirements are the same as existing requirements and correspond to WAC 246-802-130.

6	WAC-246-803-120	Application requirements for applicants from approved apprenticeships or tutorials	Lists out the application requirements.	Clarifies language without changing its effect. Parts of this subsection have been moved to different parts of the rules to make them easier to read. Does not require action or enforcement. The requirements are the same as existing requirements and correspond to WAC 246-802-130.
7	WAC-246-803-200	Training for East Asian medicine practitioners	Lists out the education requirements	Clarifies the didactic and clinical training that is required throughout the chapter.
8	WAC-246-803-210	Basic sciences	Lists out the basic sciences required	Clarifies language without changing its effect. The requirements are the same as existing requirements and correspond to WAC 246-802-040.
9	WAC-246-803-220	East Asian medicine sciences	Lists out the East Asian medicine sciences required	Makes name change and clarifies language without changing its effect. The requirements are the same as existing requirements and correspond to WAC 246-802-050.
10	WAC-246-803-240	Examinations		Clarifies language without changing its effect. Parts of this subsection have been moved to different parts of the rules to make them easier to read. The requirements are the same as existing requirements and correspond to WAC 246-802-090.
11	WAC-246-803-250	Documents in foreign language	Documents that are in a foreign language	The requirements are the same as existing requirements and correspond to WAC 246-802-070.
12	WAC-246-803-300	Patient notification of	Lists out the items that are	Clarifies language without changing its effect.

		qualifications and scope of practice	to be included on the practitioner's scope of practice and qualifications form that is provided to patients	Corresponds to WAC 246-802-120.
13	WAC-246-803-310	Referral to primary health care provider and requirements for written waiver.	Lists out the providers that are primary health care providers and the requirements for the patient written waiver.	Clarifies and updates language without changing its effect. All requirements are listed in statute. Corresponds to WAC 246-802-110. Requirements for the patient written waiver are in statute.
14	WAC-246-803-330	Plan for consultation, emergency transfer and referral	Lists out the requirements for the form	Clarifies and updates language without changing its effect. Corresponds to WAC 246-802-100.
16	WAC-246-803-340	Mandatory reporting	Mandatory reporting	Incorporates, by reference, another WAC.
17	WAC-246-803-500	Application for approval of a non-accredited school, college or program	Lists out the application process and requirements.	Clarifies language without changing its effect. Parts of this subsection have been moved to different parts of the rules to make them easier to read. Does not require action or enforcement. The requirements are the same as existing requirements and correspond to WAC 246-802-030.
18	WAC-246-803-510	Application for approval of alternative training	Lists out the application process and requirements.	Clarifies language without changing its effect. Parts of this subsection have been moved to different parts of the rules to make them easier to read. Does not require action or enforcement. The

				requirements are the same as existing requirements and correspond to WAC 246-802-030.
19	WAC-246-803-990	East Asian medicine practitioner fees and renewal cycle	Lists fees and renewal cycles.	Sets fees or rates pursuant to legislative standards. The requirements are the same as existing requirements and correspond to WAC 246-802-990.

3. Significant Rule Analysis

A. WAC 246-803-130 Applicants from foreign schools

The proposed rule requires applicants from foreign schools to send their transcripts to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) for an evaluation to determine if they satisfy the EAMP education requirements before submitting their application to the department.

Rule Cost/Benefit Analysis – This section contains requirements from the existing acupuncture rules that have been rewritten to make them easier to read. Applicants are required to send their transcript to the AACROA. The AACRAO is the recognized credentialing service that reviews the transcripts to determine if an applicant's education is substantially equal to the graduates of secretary-approved programs. The department estimates that it will take approximately four to seven hours for an applicant to collect, organize and send in the required information.

The department is proposing requiring applicants to send their transcripts to the AACRAO because it does not have the staff time to evaluate transcripts from foreign schools. Previously the department contacted the applicant's foreign school and requested verification of the courses that the applicant had taken. This process was time consuming and delayed the licensing process. The AACRAO charges \$75 for a basic statement of comparability and \$190 for a course-by-course evaluation to review an applicant's records. This will allow the department to make a quicker determination if the applicant meets the minimum requirements.

The foreign trained applicant will have an additional cost prior to licensure, but the shorter time frame for licensure outweighs this cost.

B. WAC 246-803-230 Clinical training

The proposed change to the rule defines what constitutes a qualified instructor.

Rule Cost/Benefit Analysis – The existing rule has always required that a qualified instructor observe and provide guidance to the student as appropriate. The proposed rule defines what

constitutes a qualified instructor. To be considered “qualified”, an instructor must possess the following;

- i. Broad and comprehensive training;
- ii. Two years of relevant education or work experience or relevant, current teaching experience that qualifies them to provide instruction in their areas of specialization; or
- iii. Current evidence of being qualified to teach that has been issued by a regulatory agency in Washington or another state.

Department approved programs must also be approved by the Workforce Training Board (WTB). WTB will not approve a program in East Asian medicine/acupuncture that does not completely meet their requirements or has not been approved by the department. One WTB requirement is that a clinical supervisor must be qualified to provide instruction in his/her areas of specialization. The department does not currently require instructors to be “specialized.” This needs to be added to our requirements to maintain consistency between the two agencies that approve these programs.

There are no costs associated with this rule. All department approved programs currently have qualified instructors who are qualified and provide instruction in their areas of specialization.

C. WAC 246-803-400 Inactive Status

Rule Overview – The proposed rule defines how an EAMP may obtain an inactive license, establishes renewal requirements of an inactive license, and establishes requirements to return to active status:

- A licensed EAMP must hold an active license in good standing to obtain an inactive license.
- An EAMP who holds an inactive license:
 - May not practice in Washington; and
 - Must pay applicable fees to renew annually.
- An EAMP may return to active status:
 - If an inactive status is held for three years or less by:
 - Paying applicable fees;
 - Requesting in writing to be placed on active status; or
 - If an inactive status is held for more than three years and the EAMP has been actively practicing in a state of the United States or its major territories by:
 - Paying applicable fees;
 - Providing certification of current active state license in a state of the United States or its major territories;
 - Requesting in writing to be placed on active status; or
 - If an inactive status is held for more than three years and the EAMP has not been actively practicing in a state of the United States or its major territories by:
 - Requesting in writing to be placed on active status;
 - Paying applicable fees;
 - Providing proof of successful completion of the:
 - Foundations of Oriental medicine examination;

- Acupuncture with point location examination;
- Biomedicine examination;
- Providing certification of all state licenses from other states; and
- Proof of AIDS education, if never previously provided.

Rule Cost/Benefit Analysis – The inactive license option allows an EAMP not actively practicing in Washington to keep a license for a fee that is less than the active license fee. The rule does impose additional costs to the EAMP if they have been inactive and not actively practicing in another state for more than three years. If they wish to return to active practice, they must take and pass the Foundations of Oriental Medicine, Acupuncture with Point Location and the Biomedicine examinations. These examinations must have been taken and passed within the past year.

The associated costs for the examinations are:

Foundations of Oriental Medicine - \$300.00
 Acupuncture with Point Location - \$300.00
 Biomedicine - \$300.00

All licensees returning to active status must pay the current fee of \$210.00. Although there are costs to return to active status, the standards established will ensure practitioners are current with East Asian medicine practices before returning to practice East Asian medicine in Washington.

4. Rule Package Cost/Benefit Conclusion

The proposed rules for EAMPs change the state's professional designation of acupuncturists to EAMPs and incorporates current statutory provisions governing acupuncture, while recognizing treatments, methods, and techniques used in East Asian medicine as directed by SSB 6280.

Although there are several requirements individuals must complete to become a licensed EAMP, the benefit of the rules (i.e., ensuring that EAMPs obtain the needed training, education, and expertise so they may practice safely) exceed the costs.

The compliance costs are very minimal except for the inactive license which is not mandatory.

Section 5. What alternative versions of the rule did we consider? Is the proposed rule the least burdensome approach?

Descriptions of alternatives considered and least burdensome determination

The proposed rules were developed during two open public rules workshops. The workshops were both held in Tumwater, with workshop video conferencing in Spokane for one workshop and Kent in the other. There were no participants at either video conference location.

Prior to the workshops, the department had sent out draft language to give the stakeholders a starting point. One of the proposed rules concerned defining the term Point Injection Therapy

(Aquapuncture) as it has never been defined. This definition was removed as it is not within the scope of this rulemaking.

Section 6. Did we determine that the rule does not require anyone to take an action that violates another federal or state law?

The rule does not require those to whom it applies to take an action that violates requirements of federal or state law.

Section 7. Did we determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless the difference is required in federal or state law?

The Department of Health determined that the rule does not impose more stringent performance requirements on private entities than on public entities.

Section 8. Did we determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, did we determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary?

The rule does not differ from any applicable federal regulation or statute.

Section 9. Did we demonstrate that the rule has been coordinated, to the maximum extent possible, with other federal, state, and local laws applicable to the same activity or subject matter?

There are no other applicable laws.

